

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : EMPLOYEES PROVIDENT FUND ACT

Order Reserved on: 12.12.2006

Date of Decision: February 21, 2007

WP(C) No.17671-73/2004

M/s Sewa International Fashions &Anr.....Petitioners

Through:Mr. Rajiv Nayyar Sr. Advocate with
Mr. Darpan Wadhwa, Advocates

versus

Employees' Provident Fund

Organization & Ors.

..... Respondents

Through: Mr. R.C. Chawla, Mr. Amit Kumar,
Advocates for the respondent No.1,
Mr. K. Prabhakar Rao, for respondent No.2

SHIV NARAYAN DHINGRA, J

1. By this writ petition, the petitioners have prayed for quashing of proceedings in pursuant to summons/notice No.E/DL/4831/CIRCLE-IV/I/ DATED 6.8.2003 and SUMMONS/NOTICE NO.E/DL/4831/CIRCLE-COMP/IV/I/ DAETD 29.8.2003 issued to Sewa International Fashions, a partnership firm. The contention of the petitioners is that on 7th September, 1996 a raiding team of Employees Provident Fund Organization headed by Mr. Birbal Meena, Assistant Provident Funds Commissioner(in short "APFC") raided the premises 5, Furniture Block, Kirti Nagar, New Delhi and noted down the names of 938 employees found working in the premises. Based on the report of the raiding party, a show cause notice dated 14th October, 1996 was served upon the petitioner, instead of serving it on M/s Sewa International Fashion Pvt. Ltd., who was the employer of the employees. The petitioners, in response to the notice, contended that notice has been wrongly issued which led to further investigation by department and the investigation of the department showed that in the premises 5, Furniture Block, Kirti Nagar, New Delhi several other establishments including a branch of the petitioner were working. The

department issued a notice to all such establishments and after considering the evidence led, an order under Section 7-A of the Employees' Provident Fund & Misc Provisions Act, 1952 (in short "the Act") was passed on 12th October, 2000. By this order, it was finally concluded that out of 938 employees, only 20 employees were working with petitioner No.1 M/s Sewa International Fashions. The details/ split up of employees have been given by the petitioners in written synopsis as under :-
S.NO.

Name of Establishment

No.of Employees out of 938 employees working on 7.9.1996

1

M/s Indian Exports

111

2

M/s Liberty Garments

108

3

M/s Sanjeev Fabricators

87

4

M/s Anil Garments

52

5

M/s Stylish Fabricators

377

6

M/s Naresh Fancy Clothing

94

7

M/s Hindustan Garments

42

8

M/s Sewa International Fashions

20

9

M/s New Engg. Works

2

10

Not identified to which company they belong

45

Total
938

2. It is submitted that in respect of Sewa International Fashions Pvt. Ltd., which was one of the companies functioning in the above premises, it was observed that this company was functioning in Faridabad. The Regional Provident Fund Commissioner(in short “RPFC”), Delhi, in its order dated 12th October, 2000 referred the matter to RPFC, Faridabad for further action including examining of clubbing of eight of above establishments with Sewa International Fashions Pvt. Ltd. In pursuant to the order dated 12th October, 2000 under Section 7-A of the Act, the Authorities initiated an inquiry for each establishment and determined the dues payable by such establishments working at 5, Furniture Block, Kirti Nagar, New Delhi. The dues of the petitioners were also determined and were duly paid. The inquiry was thereafter closed. However, after a gap of about three years, on 6th August, 2003, the Department again served a show cause notice for non extension of provident fund benefits to employees found working during the raid on 7th September, 1996, without specifying the period for which the show cause notice was issued. The petitioners contested the notice before the Department on the ground of res judicata stating that the order under Section 7A of the Act has already been passed on 12th October, 2000 and a fresh inquiry cannot be initiated on the basis of same raid and the matter cannot be reopened. If the respondents were dissatisfied with the order under Section 7A of the Act, the respondents should have gone into an appeal against the order. It is submitted that the Authority under Section 7A of the Act did not pass any order on the legal objection taken by the petitioners and proceeded with the show cause notice. Thus the petitioners were compelled to file the present writ petition for necessary directions by this Court.

3. It may be noted that this Court did not grant any interim stay over the proceedings before the Authority and ultimately the proceedings before authority culminated into an order dated 23.2.2005. The petitioners filed a contempt petition against the respondents. However, the respondent No.2 made a statement before the Court that the order dated 23.2.2005 will not be enforced pending disposal of the writ petition.

4. The petitioners submitted that since the subject matter of earlier show cause notice and the earlier order was same as that of the fresh show cause notice issued by the respondent on 6th August, 2003, the proceedings were bad. If any period escaped attention of the authority because of misrepresentation of the establishment, the same can be reopened only as per the provisions of Section 7C of the Act. The Authority

could not have proceeded afresh on the basis of the same raid on which it had already concluded the proceedings. However, the authority after proceeding afresh passed the order dated 23rd February, 2005 determining the amount of Rs.2,49,56,417/- as due from the establishment. It is also argued that there were separate firms having different set of employees working at 5, Furniture Block, Kirti Nagar, New Delhi and notice could not have been issued only to one firm to saddle the firm with liability of all the employees. The order passed by the Authority dated 23.2.2005 was arbitrary and without any evidence. It is submitted that all establishments except Sewa International Fashion Pvt. Ltd. and M/s Sewa International are proprietorship concerns owned by their respective proprietors on account of following factors :

“(A) They had separate A/c books, separate premises and separate Bank A/c.

(B) They were independently & separately covered under ESI Act, 1978.

(C) They were not exclusively working for Petitioner establishment Sewa International Fashions.

(D) No employees were transferred from Petitioner establishment to any of other establishment.

(E) There was no common control/supervision.

(F) There was no functional integrity.

(G) They had applied for Registration, under Factory Act independently to the competent authority. “

5. There was no reason with the authority to treat all the employees as employees of petitioners. The petitioners, therefore, prayed that the writ petition be allowed and the proceedings initiated by the respondent on the basis of notice dated 6th August, 2003 be quashed.

6. During pendency of this writ petition, this Court vide an order dated 19th January, 2005 had asked the petitioners to file an affidavit to show as to how the other establishments named in para 1 above, came to be working from the petitioner's premises namely 5, Furniture Block, Kirti Nagar, New Delhi. The Court also directed to disclose on affidavit the nature of their owners relationship inter se with the petitioners No.2 & 3 (partners of petitioner No.1), whether such establishments were paying any rent and other considerations for using the petitioners' premises. The petitioners were also to state on affidavit whether the production of record as ordered in paragraph 10 of the order dated 12th October, 2000, was complied with by the petitioners. The petitioners filed an affidavit in compliance of above order submitting that there was no inter-connection between the petitioners No.2 and 3 on the one hand and other proprietorship firms either independently or collectively. None of the proprietor/partner/owner of the aforesaid firms were common with the petitioner firm neither the petitioner firm or its partners had any interest in other firms. The

petitioners on affidavit stated that premises 5, Furniture Block, Kirti Nagar, New Delhi does not belong to the petitioners' firm. The petitioners were an exporter and other firms were doing the business of fabrication work on payments, for different jobs for the petitioner as well as for other exporters. It was stated that the petitioners were working at B-82, Mayapuri, New Delhi. The petitioner did not state anything as to for which other exporter or company these firms were doing work, whether they were tenants or licensees and whether they were paying any rent or not and if so, to whom the rent was being paid. Regarding compliance of the order dated 12th October, 2000, the petitioner in its affidavit stated that the petitioner firm was unable to produce records in respect of the employees, held to be its employees. However, APFC concerned recorded the statements of the petitioner firm and quantified the provident fund dues. Along with the affidavit, the chart of the firms giving names of proprietors of firms, was produced, which is as under:

S.No.

Name of the concern

Type

Name of proprietor/partner/director

1

M/s India Exports

Proprietorship

Anil Vinayak

2

M/s Liberty Garments

Proprietorship

Mukta Vinayak

3

M/s Sanjeev Fabricators

Proprietorship

Mukta Vinayak

4

M/s Anil Garments

Proprietorship

Anil Vinayak

5

M/s Stylish Fabricators

Proprietorship

Charanjit Walia

6

M/s Naresh Fancy Clothing

Proprietorship

Naresh Kumar

7

M/s Hindustan Garments

Proprietorship

Sanjeev Kumar

8

M/s New Engineering Works

Partnership

Late Dinanath Verma, Narender Kumar Verma

9

M/s Sewa International Fashions Pvt. Ltd.

Directorship

Subash Chaudhan, Lakshmi Devi

10

M/s Sewa International Fashions

Partnership

Prem Pal Verma, Narender Kumar Verma, Avinash Verma

7. The respondents' counsel submitted that the petitioners had not come to the Court with clean hands. The petitioners has not only played fraud upon this Court by concealing the material facts but the petitioner obtained the order dated 12th October, 2000 by playing fraud and in collusion with the then Authority. Learned counsel for respondents with all responsibility, frankly submitted that in this case in order to deprive more than 900 poor workmen of their legitimate dues like provident funds and others, the petitioners and the then APFC Mr. Ranbir Singh colluded with each other. Mr. Ranbir Singh, ostensibly for extraneous considerations, colluded with the petitioners and did pass the impugned order in a very fishy manner depriving the poor workmen of their dues. The learned counsel submitted that even during the present petition, some of the officials of the Department were not cooperating with him and were not bringing the record of the case to him and he had brought this fact to the knowledge of the Court orally and it is only thereafter that the record was given to him. He stated that the important letters written by the RPFC, Faridabad to RPFC, Delhi in respect of the query were deliberately not placed on record of this case and were placed in wrong files and the letters could only be traced later on when this fraud came to light. It is submitted that not only the petitioners played fraud at the time when the order dated 12th October, 2000 was passed but the petitioners deliberately concealed the material information and gave wrong information in the affidavit filed in this Court in pursuance of the order dated 19th January, 2005.

8. It is undisputed that a raid was conducted at the premises 5, Furniture Block, Kirti Nagar, New Delhi and 938 workmen were found working there. The raid conducting officer considered that this premises belonged to M/s Sewa International Fashions Pvt. Ltd. and, therefore, a notice dated 7th September, 1996 was issued to M/s Sewa International Fashions Pvt. Ltd. in respect of the raid. At the time of raid, the employees working in premises 5, Furniture Block, Kirti Nagar, New Delhi were physically verified by the inspectors and names of 938 employees, their length of service and salary were noted. It was observed that none of the 938 employees had been given benefit of Provident Fund Act provisions in spite of being in service for more than three years. It was also found that the attendance of several employees working there was not being recorded in any register. 34 Registers concerning the employees working in the abovesaid premises were seized. However, there were no record relating to salary, wages, provident funds and books of accounts were not produced despite the fact that the managers were present on the spot. The raiding team issued notice to M/s Sewa International Fashions Pvt. Ltd. asking for producing the record in the office of APFC on 16th September, 1996 at 11 AM. It is to be noticed that the raiding team not only prepared the list of employees working in the premises, enquiring about their salaries from each individual but obtained signatures of each employee on the list in presence of managers Mr. B.K. Sharma and Mr. R.K. Gupta, present at the spot. Both of them refused to sign the lists. A perusal of these lists would show that the employees were working from 1989 onwards. Some employees were there from 1992, some from 1993, some from 1994 and some from 1995. Out of them, only three employees were working for last about few months. The period of service of rest of employees ranged from one year to 7 years. In the face of patent defiance of labour laws in respect of more than 900 employees with length of service up to seven years, the petitioners had taken the stand that they were employees of different establishments, a list of which has been filed along with affidavit. The inquiry done by the respondents showed that all the eight firms were opened on 1st September, 1996 and their accounts were opened in Indian Overseas Bank, Rachna Cinema only on 1st September, 1996 at the introduction of the petitioner. Thus this stand was false on the face of it since all 938 employees were in service prior to 1.9.1996 for years together and they were pleaded to be the employees of firms opened on 1.9.1996. These establishments were closed soon. Three establishments were closed on 1.6.2000 and rest five on 1.1.2001. Who were the owners of these companies would be interesting to know. Although the petitioner has only given names of owners and has stated that they were having no relationship with partners of petitioner M/s Sewa International Fashions but details of relationship given by the respondents in their counter affidavit and not denied by petitioners are as under :

CHART

S.No.

Name of the Concern

Type

Name of proprietor/partner/Director

Relationship with Sh.Prem Pal Verma a partner of petitioner firm

1

M/s Indian Exports

Proprietorship

Anil Vinayak

Nephew (Sister's son)

2

M/s Liberty Garments

Proprietorship

Mukta Vinayak

Nephew's wife(wife of Sh. Anil Vinayak)

3

M/s Sanjeev Fabricators

Proprietorship

Mukta Vinayak

Nephew's wife (wife of Sh. Anil Vinayak)

4

M/s Anil Garments

Proprietorship

Anil Vinayak

Nephew(sister's son)

5

M/s. Stylish Fabricators

Proprietorship

Charanjit Walia

Used to work as Floor incharge n M/s Sewa International Fashions.

6

M/s Naresh Fancy Clothing

Proprietorship

Naresh Kumar

Brother-in-law.

7

M/s. Hindustan Garments

Proprietorship

Sanjeev Verma

Son of Sh. Avinash Verma another Partner of Petitioner establishment

8

M/s New Engg. Works

Partnership

Late Dinanath Verma, Narender Kumar Verma

Late Sh. Dinanath Verma is the father of the Partners of the petitioner establishment

9

M/s Sewa International Fashions Pvt.

Directorship

Subash Chauhan, Lakshi Devi

Sh. Subash Chaudhan used to work as Manager of Petitioner establishment, Smt. Lakshmi Devi is the mother-in-law of Sh. Avtar Verma, eldest brother of Partners of the Petitioner establishment.

10

M/s Sewa International Fashions

Partnership

Prem Pal Verma, Narender Kumar Verma, Avinash Verma

Brothers

9. It is obvious that the petitioners had not come to this Court with clean hands and had falsely stated that there was no relationship between the partners of petitioner No.1 and the proprietors of firms despite the fact that the partners and proprietors were closely related. It is obvious that the eight establishments and a company were mere camouflage to deprive the workmen of their lawful rights. The plea of the petitioners that the petitioners was not the owner of the premises is also a false plea. As per the documents placed on record by the respondent, the account manager of the petitioner had issued a certificate dated 25th January, 1995 which reads as under:

“To WHOMSOEVER IT MAY CONCERN”

This is to certify that we M/s. Sewa International Fashions are constructing at No.5, Furniture Block, Kirti Nagar, New Delhi for the purpose of letting it out on rent total cost incurred on the construction of building during the period 01.04.93 to 31.03.04 is Rs.24,74,467.39(Rs. Twenty Four lacs seventy four thousand four hundred sixty seven and thirty nine ps. only).”

For SEWA International Fashions
Accounts Manager”

10. The owner of the two firms floated by the petitioners were the employees of the petitioners, one of them made statement before the ESIC that she was not the real

owner and it were the petitioners who were the real owners and she was only used as a tool. Ms. Charanjit Batalvi was one of the owners shown by the petitioner. A letter dated 6th April, 1992 issued by petitioners reads as under :

“TO WHOMSOEVER IT MAY CONCERN”

This is to certify that Mrs. Charanjit Batalvi is the Manager of M/s. Indian Fabricators Unit of Sewa International Fashions. She has with the company over 15 years and has served the company diligently. Her emoluments along with perks exceeds Rs.8000/- per month.

We shall be extremely happy to provide any other information if you so require. “

11. Another letter of acknowledgment dated 1.4.1999 in respect of Ms. Charanjit Batalvi issued by petitioners reads as under:

“ ACKNOWLEDGEMENT

“ Dear Mrs. Charanjit Batalvi

THE MANAGEMENT IS PLEASE WITH THE HARD WORK AND DELLIGENCE IN ORDER TO ACKNOWLEDGE THE HARD WORK THAT YOU HAVE PUT IN DURING THIS PERIOD, MANAGEMENT HAS DECIDED TO GIVE YOU A RAISE OF RS.1500/- PER MONTH WITH EFFECT FROM 1ST MARCH, 1999.

YOURS TRULY,

(D.M.VERMA)”

12. The recovery officer of ESI recorded statement of Mrs. Charanjit Batalvi on 23.1.2006 and she stated before the Recovery Officer that she was merely an employee of M/s Sewa International Fashions and had been shown as proprietor of another firm under a phony arrangement. The copy of proceedings had been placed on record by the respondents. It would be worthwhile to mention that M/s Sewa International Pvt. Ltd. which got allegedly registered with RPFC, Faridabad had obtained only provisional registration from Faridabad in June, 1997 much after the raid. A letter dated 29.4.1999 was written by RPFC Faridabad to RPFC, Delhi that M/s Sewa International Fashions Pvt. Ltd. had not produced records of any of other concerns on the ground that the records got burnt. The other establishments referred herein are eight firms about which petitioner took the stand that these were working for M/s Sewa International Pvt. Ltd. and in the order dated 12th October, 2000 Mr. Ranbir Singh RPFC observed that a letter be written to RPFC, Faridabad for clubbing all these establishments with M/s Sewa International Fashions Pvt. Ltd.

13. At the time of raid on 7.9.1996, no one from petitioners firm or its manager informed raiding party that there were any other firm working in the premises. None of the workers disclosed that he was employee of any other firm other than Sewa International Fashions. Eight firms named above were created by petitioners in back date i.e. 1.7.1996 by using the names of their relatives and employees. What the raiding team found was different sections doing works like stitching, ironing, dying, fabricating, packing, cutting etc. No record in respect of firms created retrospectively was available on the spot. No records in respect of these firms was produced either before the RPFC, Delhi or RPFC, Faridabad. Mr. S.S. Bawaria, APFC, in his report dated 24.6.99 made it clear that these establishments were only paper establishments. Still Mr. Ranbir Singh did not decide the dues in respect of the 938 workmen working for the petitioner prior to 1.9.1996 and instead allotted PF Code Numbers to these paper establishments and asked them to comply with provisions of PF Act observing that Sewa International Fashions Pvt. Limited was the main concern covered in Haryana region. He ignored the fact that neither Sewa International Pvt. Ltd. nor any other firm was covered in Haryana region on the date of raid. Despite the report of RPFC, Faridabad that Sewa International Fashions Pvt. Ltd. was not existing at 12/1 Mathura Road, Faridabad and no responsible person was found at the premises. Mr. Ranbir Singh let off the petitioner by holding that out of 938 employees, only 20 belonged to petitioner. The whole order is contrary to the inquiry done by officials of RPFC, Delhi and the record available.

14. The Supreme Court in AIR 1994 SC 853 observed that Fraud-avoids all judicial acts, ecclesiastical or temporal. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/ decree- by the first court or by the highest court- has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any court even in collateral proceedings. Supreme Court in the above case held that a party who does not disclose all facts to the Court and files a suit or a claim, must be non suited for non production and not mentioning of the material facts. Non-production of relevant documents amounted to playing fraud at Court. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. The petitioners not only obtained order dated 12.10.2000 by fraud, even did not disclose true facts in this Court in relation to firms pursuant to the order dated 19th January, 2005. The collusion between the petitioners and the RPFC Ranbir Singh is writ large on the face of order. Learned counsel for the respondents rightly urged before this Court that an inquiry should be ordered to be initiated to bring the culprits to the book. I consider that the order dated 12th

October, 2000 passed by Mr. Ranbir Singh though a quasi judicial order is an order obtained and passed in pursuance of ulterior motives, playing fraud upon the Department and playing fraud upon the poor workmen who were deprived of their legitimate dues.

15. Section 44 of the Indian Evidence Act provides that a party may show in any proceedings that any judgment order or decree was obtained by fraud or collusion. In (2000) 7 SCC 543, Gram Panchayat of Village Naulkha v. Ujagar Singh, Supreme Court observed as under:

“We may state that the view taken by the Full Bench of the Punjab and Haryana High Court in Jagar Ram case AIR 1991 P&H 159 (FB) is not correct and in fact, it runs contrary to the provisions of Section 44 of the Indian Evidence Act. That Section provides that :

“44. Any party to a suit or proceeding may show that any judgment, order or decree which is relevant under Section 40,41 or 42, and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.” (emphasis supplied).

(Section 40 refers to the relevance of previous judgments which are pleaded as a bar to a second suit or trial and obviously concern Section 11 CPC.)

It appears from the commentary in Sarkar's Evidence Act (13th Edn., Reprint, at p.509) on Section 44 that it is the view of the Allahabad, Calcutta, Patna and Bombay High Courts that before such a contention is raised in the later suit or proceedings, it is not necessary to file an independent suit. The passage from Sarkar's Evidence which refers to various decisions reads as follows:

“Under Section 44 a party can, in a collateral proceeding in which fraud maybe set up as a defence, show that a decree or order obtained by the opposite party against him was passed by a court without jurisdiction or was obtained by fraud or collusion and it is not necessary to bring an independent suit for setting it aside(Bansi Lal v. Dhapo ILR (1902) 24 All 242, Rajib Panda vs. Lekhan Sendh Mahapatra ILR (1900) 27 Cal 11: 3CWN 660, Parbati vs. Gajraj Singh AIR 1937 All 28:1936 All LJ 1162, Prayag Kumari Debi vs. Siva Prosad Singh AIR 1926 Cal 1: 42 CIJ 280, Hare Krishna Sen vs. Umesh Chandra Dutt AIR 1921 Pat 193 (FB), Aswini Kumar Samaddar vs. Banamali Chakrabarty (1916-17) 21 CWN 594, Manchharam vs. Kalidas ILR 19 Bom 821, Rangnath Sakharam vs. Govind Narasinv ILR 28 Bom 639: 6 Bob LR 592, Jamiraddin vs. Khadejanessa Bibi AIR 1929 Cal 685, Bhagwandas Narandas vs. D.D. Patel & Co. AIR 1940 Bom 131: 42 Bob LR 231, Bishunath Tewari vs. Mirchi AIR 1955 Pat 66 and Gurajada Vijaya Lakshamma vs. Yarlagadda Padmanabham AIR 1955 AP 112)”.

Thus, in order to contend in a later suit or proceeding that an earlier judgment was obtained by collusion, it is not necessary to file an independent suit as stated in Jagar Ram case AIR 1991 P&H 159 (FB) for a declaration as to its collusive nature or for setting it aside, as a condition precedent. In our opinion, the above cases cited in Sarkar's Commentary are correctly decided. We do not agree with the decision of the Full Bench of the Punjab and Haryana High Court in Jagar Ram case AIR 1991 P&H 159 (FB). The Full Bench has not referred to Section 44 of the Evidence Act or to any other precedents of other courts or to any basic legal principle.

The law in England also appears to be the same, that no independent suit is necessary. In *Spencer-Bower and Turner on Res Judicata* (2nd Edn., 1969) it is stated (para 359) that there are exceptions to the principle of res judicata. If the party setting up res judicata as an estoppel has alleged all the elements of an estoppel (i.e. ingredients of res judicata), it is still open to the latter (the opposite party) to defeat the estoppel by setting up and establishing certain affirmative answers. Of these there are four main classes – fraud, cross-estoppel, contract and public policy. The authors clearly say that no active proceedings for “rescission” of the earlier judgment are necessary. They state (para 370) as follows:

“The avoidance of a judicial act on the ground of fraud or collusion is effected not only by active proceedings for rescission, but also by setting up the fraud as a defence to an action on the decision, or as an answer to any case which, whether by way of estoppel or otherwise, depends for its success on the decision being treated as incontrovertible.”

Thus, the law is well settled that no independent suit as a condition precedent is necessary.

Collusion, say Spencer – Brower and Turner (para 378), is essentially play-acting by two or more persons for one common purpose – a concerted performance of a *fabula* disguised as a *judicium* – an unreal and fictitious pretense of a consent by confederates whose game is the same. As stated by Lord Selborne, L.C. in *Boswell v. Coaks* (1894) 6 Rep 167: 86 LT 365(HL):

There is no Judge; but a person invested with the ensigns of a judicial office, is mis employed in listening to a fictitious cause proposed to him, there is no party litigating..... no real interest brought into question and to use the words of a very sensible civilian on this point, *fabula non judicium, hoc est; in scena, non in foro, res agitur.*

That, in our view, is the true meaning of the word “collusion” as applied to a judicial proceedings.

Further property of a public institution cannot be allowed to be jeopardized by persons, who at an earlier point of time, might have represented it and who were expected to effectively defend public interests and community property. Persons representing public bodies are expected to discharge their functions faithfully and in keeping with the trust reposed in them.”

16. In view of my above discussion and law laid down by Supreme Court I find no merits in the writ petition. The same is hereby dismissed with cost of Rs.1 lac because even during this writ petition, the petitioners filed false affidavit and did not disclose true facts. The cost be paid to the respondent Nos 1 and 2. The said respondents are at liberty to act in pursuance of the order dated 23rd February, 2005. However, since the respondent No.2 had given an undertaking not to act upon the order during pendency of this writ petition, the petitioners would be at liberty to challenge the order in appeal. The limitation will start running from the date of this judgment.

17. The Commissioner of Provident Fund is directed to initiate legal action against all those who were involved in this fraud. Departmental action be taken against those from the department who were involved in it. The Ministry of Labour should consider referring the case for thorough investigation to a competent investigating agency.

18. A copy of this order be sent to Secretary, Department of Labour Govt. of NCT Delhi, Delhi Secretariat & Secretary, Central, Ministry of Labour, Shram Shakti Bhawan, Parliament Street, New Delhi-110001.

Sd/-

SHIV NARAYAN DHINGRA,J